## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

William D. Moore and Yvonne Moore,	)	
plaintiffs,	)	
•	)	
v.	)	No. 08 C 596
	)	
Washington Mutual Bank,	)	Honorable Ruben Castillo
	)	
defendant.	)	

## WASHINGTON MUTUAL BANK'S MOTION TO DISMISS THE COMPLAINT

Washington Mutual Bank, by its attorney, Glenn E. Heilizer, pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 9(b), respectfully moves to dismiss the complaint. In support of this motion, Washington Mutual Bank states as follows:

- 1. This lawsuit arises from a mortgage loan transaction between plaintiffs and defendant Washington Mutual Bank. Plaintiffs allege they obtained the dismissal of two successive state court foreclosure lawsuits, based on the Bank's failure to comply with HUD consultation requirements. Plaintiffs further say they filed a claim with the Illinois Department of Human Rights, and apparently are unhappy with certain evidence presented in that proceeding.
- 2. The complaint asserts three federal claims -- under the Fair Debt Collection Practices Act, the Real Estate Settlement Procedures Act, and violation of Federal Housing Regulations -- and seven supplemental state law claims.
  - 3. The Fair Debt Collection Practices Act claim (Count I) must be

dismissed, because defendant is not a debt collector, and because the claim is timebarred.

4. The Real Estate Settlement Procedures Act claim (Count II) must be

dismissed because no violation of that statute is alleged.

5. The Federal Housing Regulations claim (Count III) must be

dismissed, because those allegations do not give rise to an independent cause of action.

6. Additionally, the remaining state law claims (Counts IV, V, V#2, VI,

VII, VIII, and VIII#2), must be dismissed for lack of subject matter jurisdiction. If the

three federal claims are dismissed, supplemental jurisdiction should not be exercised.

7. Finally, even if plaintiffs' state laws claims are considered on their

merits, they are independently defective, and must be dismissed.

8. Washington Mutual Bank incorporates its contemporaneously filed

memorandum of law.

Wherefore, Washington Mutual Bank respectfully requests that the

complaint be dismissed.

WASHINGTON MUTUAL BANK

By: <u>Helyn</u> One of its attorneys

Glenn E. Heilizer Law Offices of Glenn E. Heilizer Five North Wabash Avenue Suite 1304 Chicago, Illinois 60602 312-759-9000

Dated: May 27, 2008